

Message Text

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ORIGIN OPIC-06

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DRAFTED BY OPIC/GC:LLUCERO

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FM SECSTATE WASHDC

TO AMEMBASSY KUALA LUMPUR

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E.O. 11652: N/A

TAGS: EFIN

SUBJECT: OPIC INVESTMENT GUARANTY AGREEMENT

REF: (A) KUALA 5070 (B) KUALA 5122

1. IN LIGHT OF REF (B), DOES EMBASSY STILL NEED TEXT OF SECTION 413(B)(4) OF MUTUAL SECURITY ACT OF 1954 REQUESTED IN REF (A)?

2. CURRENT U.S. LEGISLATION GOVERNING THE INVESTMENT INSURANCE AND GUARANTY PROGRAM ENACTED BY CONGRESS IN 1969 IS NOW CONTAINED IN TITLE IV, CHAPTER 2 OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED ("FAA") (22 U.S.C. SECTIONS 2191-2200A). THIS LEGISLATION SUPERSEDED, AMONG OTHER PROVISIONS, SECTION 221(B) OF THE FAA.

3. EMBASSY HOWEVER, IS REQUESTED TO ADVISE THE APPROPRIATE GOM OFFICIAL(S) THAT ALTHOUGH U.S. LEGISLATION RELATING LIMITED OFFICIAL USE

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TO THE INVESTMENT INSURANCE AND GUARANTY PROGRAM IS NO

LONGER GOVERNED BY SECTION 221(B) OF THE FAA, IT IS NOT NECESSARY TO AMEND THE INVESTMENT GUARANTIES AGREEMENT BETWEEN THE TWO GOVERNMENTS EFFECTED BY AN EXCHANGE OF NOTES OF APRIL 21, 1959, AND AMENDED BY AN EXCHANGE OF NOTES OF JUNE 24, 1965 (THE 'AGREEMENT') FOR THE FOLLOWING REASONS:

(A) THE LANGUAGE IN THE AGREEMENT OF JUNE 24, 1965 (THIRD PARAGRAPH) IS INTENTIONALLY BROAD AND WAS MEANT TO INCLUDE NOT ONLY THE GOVERNING LEGISLATION IN EFFECT AT THE TIME THE AGREEMENT WAS EFFECTED, BUT ANY SUBSEQUENTLY ENACTED "APPLICABLE U.S. LEGISLATION". TITLE IV, CHAPTER 2 OF THE FAA (SECTIONS 231-140A) IS CURRENTLY THE "APPLICABLE U.S. LEGISLATION" GOVERNING THE INVESTMENT INSURANCE AND GUARANTY PROGRAM;

(B) THE PRACTICE WITH RESPECT TO AMENDMENTS OF U.S. LEGISLATION RELATING TO THE INVESTMENT INSURANCE AND GUARANTY PROGRAM HAS BEEN TO INFORM SIGNATORY GOVERNMENTS OF SIGNIFICANT CHANGES IN U.S. LEGISLATION THROUGH CONSULTATIONS AND CORRESPONDENCE. THIS HAS BEEN AND CONTINUES TO BE THE PREFERRED COURSE SINCE IT HAS BEEN CONSIDERED INCONVENIENT AND INDEED UNNECESSARY TO AMEND THE AGREEMENT EACH TIME SUCH LEGISLATION IS AMENDED; AND

(C) THE ISSUANCE OF INVESTMENT INSURANCE ON GUARANTIES UNDER CURRENT U.S. LEGISLATION DOES NOT IN ANY WAY ENTAIL ANY NEW OR ADDITIONAL OBLIGATION TOWARD THE INVESTOR OR INVESTMENT ON THE PART OF THE GOM.

4. OPIC CAN PROVIDE EMBASSY A DETAILED STATEMENT OF PARA 3 IF NECESSARY.

5. OPIC IS FORWARDING TO EMBASSY FULL TEXT OF TITLE IV, CHAPTER 2 OF FAA VIA AIR POUCH SEPTEMBER 4. KISSINGER

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